

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) IN EQUITY NO. C-125-MMD
Plaintiff,) Subproceeding: 3:73-CV-00127-MMD-WGC
WALKER RIVER PAIUTE TRIBE,) **[PROPOSED] ORDER REGARDING**
Plaintiff-Intervener,) **DISCOVERY AND MOTION SCHEDULE**
vs.) **AND PROCEDURE**
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
Defendants.)

Pursuant to the *Stipulated Scheduling Order and Discovery Plan* (March 7, 2019) (ECF No. 2437) (Scheduling Order) and the *Stipulation and Order for Extension of Time to Submit Proposal Regarding Discovery Procedure and Agenda for Status Conference, and to Vacate Status Conference of December 18, 2019* (December 12, 2019) (ECF No. 2591) (Extension Order), the United States and Walker River Paiute Tribe (“Tribe”), and the Walker River Irrigation District, the Nevada Department of Wildlife, Lyon County, Centennial Livestock, Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC and Frade Ranches, Inc., The Schroeder Group, California State Agencies (California State Water Resources Control Board, California Department of Fish and Wildlife and the California Department of Parks and Recreation), and Mono County, California (the “Principal Defendants”), and Mineral County and the Walker Lake Working Group were to submit a proposal to the Court on or before January 30, 2020 concerning, among other things, coordination of discovery, including sharing discovery, scheduling discovery,

1 and other matters related to discovery and concerning matters related to dispositive or partially
2 dispositive motions (the “Discovery/Motion Proposal”).

3 Pursuant to the Minute Order of December 17, 2019 (ECF 2592), the Court scheduled a
4 Status Conference for February 19, 2020 at 10:00 a.m. to, among other things, issue any orders
5 needed to resolve disputes, if any, concerning the Discovery/Motion Proposal among the parties,
6 and to amend the Scheduling Order accordingly. By Minute Order of December 18, 2019 (ECF
7 2593) further directed the United States to prepare an agenda for that Status Conference to be
8 submitted on or before February 14, 2020.

9 The United States and Walker River Tribe and the Principal Defendants have again
10 conferred to attempt to resolve the areas of disagreement between them. Based upon their
11 conference, although the parties have common ground, they also continue to have differences
12 between them concerning the content of the Discovery/Motion Proposal.

13 The Court, having considered the arguments of the parties, and good cause appearing,

14 **IT IS HEREBY ORDERED:**

15 **1. Parties to This Action.** “Plaintiffs” are the United States of America and the
16 Walker River Paiute Tribe as it relates to water rights claims asserted on behalf of the Tribe by the
17 U.S. Bureau of Indian Affairs and the Tribe (and as amended May 3, 2019) and collectively
18 referred to herein as “Plaintiffs.” For purposes of this Order, “Defendants” are those parties that
19 filed answers to Plaintiffs’ Amended Counterclaims on August 1, 2019 who continue to be
20 represented by counsel, and are collectively referred to herein as “Defendants.”

21 **2. Discovery.**

22 **a. Subjects of Discovery.** Discovery will be on the water rights claims for the
23 Walker River Paiute Tribe asserted by the Plaintiffs and as amended on May 3, 2019. As well,
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discovery will be on those responses and Affirmative Defenses asserted by Defendants on August 1, 2019.

b. **Period of Discovery.** Discovery may commence on entry of this Order, and shall close on October 1, 2022. Written discovery may continue to close of discovery, provided it is served so that a response is due on or before October 1, 2022.

c. **Disclosure of Lay Witnesses.** When and as a party becomes aware of lay witnesses as the matter progresses, the party shall disclose them, and shall remain subject to the obligation to supplement as required by Rule 26(e)(1).

d. **Disclosure of Expert Witnesses.** Expert witnesses shall be disclosed when their expert report is due as provided in paragraph 8 below.

3. **Discovery Coordination.** Discovery will be coordinated through coordinating counsel. For Plaintiffs, coordinating counsel will be counsel for the United States, Guss Guarino. For Defendants, coordinating counsel will be counsel for the Walker River Irrigation District, Gordon DePaoli.

4. **Motions and Motion Coordination.** Motions may be filed at any time. The last date to file dispositive or partially dispositive motions will be 30 days after close of discovery, or October 31, 2022. Responses to dispositive or partially dispositive motions will be due ninety (90) days after service, and replies in support of dispositive or partially dispositive motions will be due forty-five (45) days after service. No page limit will be imposed on a brief to the extent that multiple common issues are incorporated into a single brief filed on behalf of Plaintiffs or Defendants. The provisions of the Local Rules shall apply to page limits for all other motions, unless the Court orders otherwise. The Court recognizes that the scope of this matter, including the number of claims, the number of issues and the number of participating defendants who, to a

certain extent, have somewhat differing interests, makes it difficult to require one brief on one issue. Nevertheless, the Plaintiffs and the Principal Defendants will coordinate, to the extent feasible, the filing of motions, the grounds for motions, and briefs supporting motions, and will do their best to file joint motions and joint briefs. There will be no page limit on briefs which address a common issue in a single brief. To the extent that that is not the case, unless the Court orders otherwise, the Local Rules concerning page limits will apply.

5. Limits on Discovery. Discovery will be conducted in accordance with the Federal Rules of Civil Procedure, applicable local rules of this Court, and this Order.

6. Written Discovery Requests.

a. Interrogatories. Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate written discovery to avoid repetition and undue burden on a party in responding to interrogatories. The Principal Defendants, who are represented by a total of seven groups of attorneys, will be limited to a total of 175 interrogatories (25 x 7, for each Principal Defendant group).

b. Request for Production of Documents and Things (“RFPs”). Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate RFPs to avoid repetition and undue burden on a party in responding to RFPs. The Parties will prepare and serve RFPs through coordinating counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 34. The Parties will be responsible for producing documents in their possession, custody, and control. For the United States, it will be responsible for producing documents in custody and control of the Department of the Interior/United States Bureau of Indian Affairs as well as those agencies that have asserted water right claims in the Walker River Basin of Nevada

1 a. The requesting party shall make any such request as soon as reasonably
2 practical after receiving a document production.

3 b. The requesting party shall provide a list of bates numbers of the documents
4 that it is requesting to be produced in native file format.

5 c. Within fourteen (14) days of receiving this request, the producing party will
6 either (a) produce the requested native files to the extent reasonably practicable, or (b) respond in
7 writing, setting forth its position on the production of the requested documents.

8 d. If the parties are unable to agree as to the production of the requested
9 documents in native format, the parties may submit the matter to the Court.

10 The Parties do not need to produce copies of documents that were previously produced or
11 copies of documents that are publicly available (such as published materials one might find on the
12 Internet, news publications, a public repository, or a library). If a Party wishes to rely on the public
13 availability of a document, the responding Party will identify the specific location where the
14 document is available to the public (e.g., specific Internet location, specific library, etc.). If a
15 document has been previously produced, the response will identify the document previously
16 produced, and when, and also refer to the location of it by bates number or otherwise.

17 **8. Expert Discovery.** Discovery from experts will be in accordance with the Federal
18 Rules of Civil Procedure. Provided, however, that all expert witnesses shall be required to submit
19 a report consistent with the requirements of Rule 26(a)(2)(B), even if the witness would not
20 otherwise be required to provide such a report and would only be subject to the requirements of
21 Rule 26(a)(2)(C). The parties do not need to produce copies of documents that were previously
22 produced or copies of documents that are publicly available (such as published materials one might
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1 find on the Internet, news publications, a public repository, a library - so long as the documents
2 are identified and their specific location is provided).

3 Opening expert reports will be due on March 31, 2021. Responsive expert reports will be
4 due on September 30, 2021. Rebuttal expert reports will be due on December 31, 2021. Expert
5 depositions will take place between February 1, 2022 through August 1, 2022. However, if
6 reasonably necessary for purposes of preparing responsive expert reports, with the consent of
7 relevant parties, deposition of such expert witness may commence immediately after the expert
8 witness's opening expert report has been disclosed. If the relevant parties do not consent, the party
9 seeking to take a deposition prior to responsive or rebuttal expert reports may seek leave of Court
10 to conduct such a deposition.

11 **9. Privileged Materials Located in the Offices of Counsel.** If a party is claiming
12 privilege as to a requested document, it should be placed on a privilege log, regardless of where it
13 is located.

14 **10. Privileged Communications (Attorney-Client Communications and Attorney**
15 **Work Product) and Privilege Log.** Unless expressly stated otherwise, no discovery request
16 should be construed to request communications exclusively between a party (including
17 representatives, employees and agents) and its counsel, and work product created by counsel.
18 Unless such communications are expressly requested or otherwise contain discoverable
19 information (*e.g.*, Fed. R. Civ. P. 26(b)(4)(C)), such materials will not be produced or placed on a
20 privilege log. The parties will follow Fed. R. Civ. P. 26(b)(5)(A) to provide a log of privileged or
21 work product materials subject to any exception which might be applicable.

22 **11. Depositions.** Depositions will be taken in accordance with Fed. R. Civ. P. 30 and
23 31. Lay depositions may be taken at any time. Expert depositions will be taken in accordance
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1 with the schedule set forth in paragraph 8 above. The parties will have the right to depose any
2 identified expert or lay witness. Subject to specific agreement(s) otherwise, depositions will occur
3 in the Reno/Sparks, Nevada, metropolitan area, be taken in a single day, and last for a maximum
4 of 7 hours of testimony. Notices of deposition and subpoenas duces tecum directed to a deponent
5 may be served on coordinating counsel by email 30 days before a scheduled deposition. Costs of
6 lay/expert witness deponents (which include but are not limited to witness travel, expense, and
7 time spent preparing for and attending the deposition) will be borne by the Party on whose behalf
8 the lay/expert witness will be called. All other costs associated with depositions (such as rented
9 office space, cost of court reporters, etc.) shall be borne by the Party taking such deposition. For
10 all oral depositions, the Parties request the right of review pursuant to Fed. R. Civ. P. 30(e). The
11 limit in Fed. R. Civ. P. 30(a)(2)(A)(i) of 10 depositions per side will not apply to expert or lay
12 witnesses or to persons who have been identified in initial disclosures or in supplemental
13 disclosures.

14 **12. Fed. R. Evid. 502(b).** The parties invoke Rule 502(b) of the Federal Rules of
15 Evidence and agree that in the event of an inadvertent disclosure of privileged/protected material,
16 such privilege or protection is not waived or forfeit by inadvertent disclosure. If a party determines
17 that it has produced a document upon which it wishes to make a claim of privilege, the producing
18 party shall, within 14 days of making such determination, give all counsel of record notice of the
19 claim of privilege. Any party that complies with this paragraph will be deemed to have taken
20 reasonable steps to rectify disclosures of privileged or protected information or materials. If a
21 party identifies a document that appears on its face or in light of facts known to the party to be
22 subject to another party's claim of privilege, the party identifying the potential claim of privilege
23 is under a good-faith obligation to notify the party holding the potential claim of privilege.

Recovery, management, and disputed associated with disclosed privileged material will be governed by FRCP 26(b)(5)(B).

13. Documents Located at American Indian Records Repository. When the special procedures to access records at the American Indian Records Repository are known, any party may seek an amendment to this Order, if necessary.

14. Extensions of Modifications of Discovery Plan and Scheduling Order. LR26-4 governs modifications, extensions of discovery plan and scheduling order. Any stipulation or motion to extend a deadline set forth in this Order must be filed with the Court no later than 3 days prior to the deadline sought to be extended.

15. Supersedes Scheduling Order. To the extent there is any conflict between the Scheduling Order (ECF 2437) and this Order, the provisions of this Order shall control.

16. Parties May Seek Relief From Court. Nothing in this Order shall prevent any party from seeking permission by stipulation and/or order of the Court for relief from any provision of this Order.

17. Mineral County and Walker Lake Working Group. Defendants Mineral County and the Walker Lake Working Group do not anticipate actively engaging in the discovery process described in the paragraphs above, and coordinating counsel for Principal Defendants does not have to coordinate with them in the discovery process. With respect to motions, including dispositive motions, Defendants Mineral County and Walker Lake Working Group will comply with the schedule detailed above, but they and the Principal Defendants are not required to coordinate with respect to motions. Plaintiffs and Principal Defendants agree that with respect to any written discovery served, Defendants Mineral County and the Walker Lake Working Group are entitled to copies of responses to such discovery, and that they are entitled to participate in any

1 scheduled depositions. To the extent that Defendants Mineral County and the Walker Lake
2 Working Group later determine that they in fact need to more fully participate in the discovery
3 process, upon motion and good cause shown, the Court will consider any such request and grant
4 any appropriate relief.

5 Dated: _____, 2020

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8 UNITED STATES MAGISTRATE JUDGE
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